

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Ray G. Zagozda,
Appellant,

v.

Douglas County Board of Equalization,
Appellee.

Case No: 14R 361

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on June 29, 2015. Ray G. Zagozda (herein referred to as the “Taxpayer”) appeared telephonically at the hearing before the Commission. Malina M. Dobson, Deputy Douglas County Attorney, appeared telephonically on behalf of the Douglas County Board of Equalization (herein referred to as the “Douglas County Board”). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction.

II. STANDARD OF REVIEW

Section 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when it is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹ Any action of the County Board of Equalization pursuant to section 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with section 77-5013 on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.² Parties cannot confer subject matter

¹ See, Neb. Rev. Stat. 77-5013 (2014 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009).

jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On September 11, 2014, the Commission received an envelope containing an appeal of the determination of the Douglas County Board made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009).⁴ The envelope did not contain the applicable \$25 filing fee. The deadline for filing the filing fee for tax year 2014 was on or before August 24 or on or before September 10 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.⁵ The Douglas County Board did adopt a resolution extending the deadline for hearing protests, so the filing deadline for tax year 2014 was September 10, 2014.⁶

A filing fee is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission on or before the date specified by law for filing the appeal.⁷ The Taxpayer's envelope received by the Commission on September 11, 2014, did not contain a filing fee. The envelope containing the filing fee was postmarked November 10, 2014, and received by the Commission on November 14, 2014.⁸

A Show Cause hearing was held on June 29, 2014, to determine if the Commission has jurisdiction to hear the Taxpayer's appeal. In effect, the Taxpayer asked the Commission to take jurisdiction because he intended to submit the applicable \$25 filing fee with his mailing postmarked August 28, 2014, and received by the Commission on September 11, 2014.⁹

The Taxpayer's request for relief sounds in equity. The Nebraska Supreme Court has held that the Commission does not have equity powers in jurisdictional matters.¹⁰ The Commission

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Case File.

⁵ Neb. Rev. Stat. §77-1510 (Reissue 2009).

⁶ Case File.

⁷ Neb. Rev. Stat. 77-5013(2) (2014 Cum. Supp.).

⁸ Case File.

⁹ See, Case File (the Commission notes that it received the \$25 fee on November 13, 2014, in an envelope postmarked November 10, 2014).

¹⁰ *Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n*, 260 Neb. 905, 921, 620 N.W.2d 90,102 (2000).

did not receive the \$25 filing fee by the statutory deadline. Therefore, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.
2. This decision, if no appeal is filed, shall be certified within thirty days to the Douglas County Treasurer, and the officer charged with preparing the tax list for Douglas County as follows:

Diane Battiato
1819 Farnam Stre. Ste H09 Civic Center
Omaha, NE 68183-1000

John Ewing
1819 Farnam St., Rm H03
Omaha, NE 68183

as required by Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).

3. Each party is to bear its own costs in this matter.

SIGNED AND SEALED July 2, 2015

Seal

Thomas D. Freimuth, Commissioner

Nancy J. Salmon, Commissioner